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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Second Appeal No.259 of 2007

Appellant Plaintiff

Devnath, S/o Ujiyar, Caste-Rajwar, aged about 61 years, R/o Village Kunjnagar, Tahsil Surajpur, Distt. Surguja (CG)

versus

Respondents Defendants

1. Kansho Prasad, S/o Jagarnath, Caste-Rajwar, aged about5 46 years.
2. Girwar Prasad S/o Jagarnath, Caste-Rajwar, aged about 38 years
3. Jagarnath, S/o Ujiyar, Caste-Rajwar, aged about 65 years

   Respondents 1 to 3 R/o Village Kunjnagar Tahsil Surajpur, Distt. Surguja (CG)
4. State of Chhattisgarh, through Collector, Surguja Distt. Surguja (CG)

Second Appeal under Section 100 of the Code of Civil Procedure, Second Appeal valued at Rs.600/- for declaration, partition and permanent injunction and court fees of Rs.52/- is being affixed.

Present : Shri M.P.S. Bhatia, counsel for the appellant.
Shri Akhil Agrawal, PL for State/respondent No.4.

ORAL ORDER

(Passed on 16th July, 2007)

Heard on I.A. No.2, for taking document on record.

2. Considered and allowed. Document is taken on record.

3. Also heard on admission.

4. In this appeal, the judgment and decree dated 23.3.2007 passed by the IInd Additional District Judge (FTC) Surajpur, Distt. Surguja (CG) in civil

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appeal No.3-A/2006 is under challenge, whereby the lower appellate Court has affirmed the judgment and decree dated 31.12.2005 passed in civil suit No.142-A/2004 by the Civil Judge, Class-I, Surajpur dismissing the plaintiff's suit.

5. The appellant/plaintiff could succeed in the suit only on proof of the following facts:-

A/ that, the sale deed dated 16.10.1992 (Ex.D-5) executed by Birso Bai in favour of Jagannath was void being without consideration.

B/ that, the appellant/plaintiff was the adopted son of late Badaik.

6. Both the Courts below have recorded a concurrent finding of fact that the plaintiff has miserably failed to prove that the sale deed executed by Birso Bai in favour of Jagannath on 16.10.1992 was without consideration. So far as the second ground is concerned, the counsel for the appellant before the lower appellate Court had very frankly conceded that the appellant/plaintiff had failed to establish that he was the adopted son of late Badaik.

7. In this view of the matter, I am of the considered opinion that on both the issues, the finding of fact recorded by both the Courts below is impeccable and no substantial question of law arises for determination in this appeal.

8. The appeal being devoid of any merit is dismissed at the stage of admission. There shall be no order as to costs.

9. In view of the above, I.A. No. 1, application for grant of temporary injunction/interim relief stands disposed of.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya